

Written Testimony of Representative John Sarbanes (MD-03)
Make It in America: What's Next?
PANEL 2: Making Government Work Better

First, I would like to thank Minority Whip Steny Hoyer for convening this important hearing. Under your leadership, Democrats' "Make It In America" agenda has become a crucible for innovative thinking on how best to address the economic challenges facing our nation, working towards a competitive economy and job market for the future.

Yet, as you have rightly recognized, part and parcel to building a 21st century American economy is making sure our government – namely, our Congress – can work effectively and, in doing so, regain the trust and support of the American people. I applaud your attention to this matter and am pleased to offer my perspective on how to build that trust today.

The Challenge We Face

Americans across the political spectrum increasingly think our democratic system is rigged.¹ Americans are angry that Congress is not addressing their concerns, and most know exactly where to lay the blame: money.² Three out of four voters believe "wealthy Americans have a better chance than others of influencing the election process."³ Overwhelmingly, Americans believe that big money campaign contributors and Washington-insiders have more access and influence to the machinery of government than do the voters.⁴ In fact, a recent survey found that a whopping 96% of Americans agreed that it was critical to reduce the influence of money in politics.⁵

Whether they label it "crony-capitalism" or "corporate welfare," it is clear millions of Americans are convinced that insiders own their government and they are using it to benefit their interests, not the public interest. As elected officials, we have responsibility to address their concerns. The issue is not so much the presence of money in politics. Campaigns cost money and candidates will always need it to get their message out and to engage with voters. The issue is the source of that money. There is too much money in politics coming from too few. This concentrated money in our politics is reducing trust in our democracy in three distinct ways.

Concentrated Money Gums up the System

The constant money-chase undermines the focus of elected officials. It is estimated that members of Congress spend anywhere from 30%-70% of their time fundraising. That means less time studying policy, less time building the relationships needed to govern, and, most important, less time listening to your constituents.

¹A Reason-Rupe survey interviewed 1,003 adult Americans in April 2014. When asked 'what percentage of politicians, from zero to one hundred, are corrupted by campaign donations and lobbyists?' the median response was 75%. Emily Ekins, *Americans Say 75 Percent of Politicians Are Corrupted, 70 Percent Use Political Power to Hurt Enemies*, Reason-Rupe (Apr. 3, 2014, 9:16 AM), <http://reason.com/poll/2014/04/03/americans-say-75-percent-of-politicians>.

² *Ibid.*

³ Adam Smith, *Poll: Americans are fed up with money in politics*, Every Voice Blog (May 23, 2014, 3:39 PM), <http://everyvoice.org/the-blog>.

⁴ *Ibid.*

⁵Survey on Money in Politics, Global Strategy Group (Nov. 27-Dec. 12, 2013).

In the aggregate, these fundraising demands have corroded the institutional capacity of our Congress, making it less able to respond to our many challenges. In 1982, then Senator Bob Dole was prescient when he said, “When these political action committees give money, they expect something in return other than good government. It is making it much more difficult to legislative. We may reach a point where if everybody is buying something with PAC money, we can’t get anything done.”

Concentrated Money Corrupts Merit Based Analysis

Policymakers, operating under the undue influence of big money politics, are increasingly viewing policy negotiations and considerations through the lens of how policy impacts their campaign contributors. Whereas in years before, Representatives may have judged policy for its impact on their constituents and the advancement of the public good, now the interests of campaign contributors loom large.

A common misunderstanding is the view that political money operates in a purely transactional fashion and that campaign contributions are used to “buy” votes. This is a caricature. The overwhelming majority of representatives come to Washington for the right reasons. Members of Congress take their responsibility as stewards of the public trust seriously. No matter the demands of modern political fundraising, very few lawmakers, past or present, have ever or would ever explicitly sell their vote.

Instead, the exercise of influence is an art, with money playing an integral role in the complex Washington ecosystem. Modern day lobbying is built on a “culture of reciprocity,” in which relationships, both professional and personal, are cultivated and exchanged.⁶ Money helps to lubricate those relationships, but is rarely employed in a purely transactional fashion. Still, that impression in the public persists and we must work to correct his view through meaningful reform.

Concentrated Money is Causing Many Americans to Flee the Town Square, Ceding Ground to Extremism

Americans are smart – when they look at our big money dominated system they do not see a role for the little guy, so they tune-out and turn-off. The 2014 elections saw the lowest voter turnout in a national election since 1942.⁷ But such poor attendance on Election Day should come as no surprise given American skepticism about government's capacity to carry out the public interest.⁸

For many, it is a matter of self-respect: why participate when you know your voice does not matter? This cedes ground to elements that are extreme – both in ideology and tactics – and they dominate the public debate. That dynamic, which flows from the perception that big money and special interests have too much influence, helps explain our current dysfunctional politics.

Changing the Debate on Campaign Finance Reform

⁶Thurber, James A. *Corruption and Scandal in Washington: Have Lobbying and Ethics Reform Made a Difference?*, In *Corruption in American Politics*, eds. Michael A. Genovese and Victoria Farrar-Myers (2010).

⁷ Michael P. McDonald, *2014 General Election Turnout Rates*, United States Election Project, <http://www.electproject.org/2014g> (last updated Dec. 30, 2014).

⁸Congress’ approval rating hit an all-time low following the Federal government shutdown in the fall of 2013. This low approval tracks the public’s record low feelings of trust and confidence in the institution. Jeffrey M. Jones, *Congressional Job Approval Stays Near Historical Low*, Gallup (Aug. 12, 2014), <http://www.gallup.com/poll/174806/congressional-job-approval-stays-near-historical-low.aspx>.

For the better part of the 20th Century and into the 21st Century, the campaign finance reform movement has worked to build a “rules-based” system of campaign funding that would fight corruption and reduce the influence of concentrated money in politics. With contribution limits, spending restrictions, and disclosure requirements, these reforms—embodied in the Federal Election Campaign Act of 1971, the post-Watergate reforms of 1974 and the Bipartisan Campaign Reform Act of 2002—have sought to temper the worst excesses of big money in the political system.

Nevertheless, the financing of American politics has largely remained the province of the economic elite and organized business interests, with little role for everyday Americans. Furthermore, the Roberts Court in recent years has written a new chapter of the reform effort, fundamentally narrowing the so-called “corruption-rationale” and thereby the State’s ability to apply campaign finance restrictions. In the face of this reality, I argue that policymakers must revisit—both as a matter of law and strategy—the “rules-based” campaign finance system and embrace a new emphasis on “power-based” reforms.

The Government By the People Act: Power Over Rules

“Power-based” reforms start with the basic goal of giving a voice back to everyday Americans. Again, the issue is not the *presence* of *money* in politics. The issue is the *source* of that money. There is too much money in politics coming from *too few*. I believe we can effectively address the challenge of concentrated money with practical and proven campaign finance reform: decentralized small donor democracy.

Working with a diverse coalition of reform advocates, policy experts, legal scholars, and my colleagues on Capitol Hill, I have advanced legislation that would create a new “power-based” system: The Government By the People Act (H.R. 20).⁹ Through a combination of small dollar campaign contribution tax credits and publically-supported multiple matching funds,¹⁰ the Government By the People Act would democratize our campaign finance system, empowering everyday Americans and the candidates they support to reclaim their republic. In doing so, the proposed system would break the undue influence of the wealthy and well-connected in the policy process, leading to a more representative democracy and a Congress that can better serve the public interest and not the special interest.

The proposal directly addresses the most sinister feature of our current campaign finance system: too much money from too few. First, the Government By the People Act expands the universe of potential campaign contributors through the creation of a My Voice Tax Credit, a 50% tax credit on small donations that total \$100 in an election cycle (every two years). A small donor who gives \$50 to their preferred candidate(s) in a given year would be able to receive \$25 back on their taxes.¹¹ The My Voice Tax Credit would dramatically expand and diversify the universe of potential donors, allowing more Americans to participate in the funding side of elections. Critically, the proposed tax credit is refundable, so that even individuals or households with no federal income tax liability are empowered to get in the game. While admittedly modest in size, the My Voice Tax Credit is very consequential when combined with the matching feature of the Government By the People Act.

⁹H.R. 20, 114th Cong. (2014).

¹⁰ The idea of blending tax credits and matching support is not novel. *See generally* Michael Malbin, Thomas Mann, Norman Ornstein and Anthony Corrado in “Reform in the Age of Networked Campaigns,” published in 2010; Spencer Overton, *The Donor Class: Campaign Finance, Democracy, and Participation*, 153 U. PA. L. REV. 73(2004) (arguing that campaign contribution reforms like matching funds and tax credits for smaller contributions would result in more Americans making contributions).

¹¹ Individuals would be eligible for a maximum of \$50 in an election cycle, while households could claim up to \$100.

The second component of the Act—The Freedom From Influence Matching Fund—is designed to significantly amplify the value of small contributions by applying a citizen-funded multiple match on small dollar contributions to qualified candidates. In effect, the Government By the People Act makes a bargain with all candidates for Congress:¹² if you are able to demonstrate broad-based support¹³ and agree to limit the amount of private high dollar campaign funds you accept,¹⁴ the Freedom From Influence Matching Fund will boost the value of small contributions to your campaign by a factor of 6 to 1. By establishing a new source of funding that can directly compete with the prevailing sources of campaign funds – i.e., wealthy donors and PACs,—the Government By the People Act presents a truly viable alternative to the status quo.

The proposed system has been carefully designed to ensure that participating candidates will have sufficient resources to run viable campaigns. Taking the FEC profiles of winning House candidates from 2014, we modeled what their fundraising totals would be under the Government By the People Act system. The result: 77% of winning House candidates from the 2014 midterm campaign would exceed their 2014 fundraising totals under the proposed system.

Through a combination of campaign contribution tax credits and matching support, the Government By the People Act would give every American the ability to provide meaningful support to the candidate of their choice. Those candidates who are successful in building broad support from the people would be rewarded with the necessary resources to wage a competitive campaign.

Restoring Trust in Our Democracy

We all believe it is critical we make sure every American can “Make It In America.” I firmly believe that begins with giving every American a meaningful voice in our democracy. For too long, we have focused on “rules-based” restrictions in the realm of campaign finance. The Government By the People Act offers a new path forward, giving power to everyday Americans. House Democrats can recapture the trust and support of the American people by supporting bold reform. Thank you for the opportunity to address the panel and for your continued leadership.

¹² As drafted, the Government By the People Act (H.R. 20) only applies to elections for the U.S. House of Representatives. A companion piece of legislation – the Fair Elections Now Act (S. 1538) – has been introduced in the Senate by Senator Richard Durbin (D-IL). While certain provisions differ (qualification standards, public support design, etc.) so as to account for the different complexion of Senate elections, the core concept of citizen-funded elections – pairing public matching and grant support with small donor tax credits – remains.

¹³ Candidates would be required to raise at least one thousand small-dollar donations (\$150 or less per election/\$300 per election cycle) totaling at least \$50,000 from constituents residing within the state in which the candidate seeks election. H.R. 20, 114th Cong. (2014)

¹⁴ Candidates must agree to a voluntary reduction in the maximum private individual contribution, accepting only contributions up to \$1000 per election (down from \$2700 in 2016). Moreover, participating candidates would be ineligible for receipt of traditional Political Action Committee contributions. Instead, participating candidates would be able to fundraise from People’s PACs – PACs that exclusively raise their resources in contributions of \$150 or less – up to \$5000 annually.